

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U. S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. SMALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

IN RE

WILLIAM R. DAVIDSON  
  
DEBTOR

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BANKRUPTCY CASE  
NO. 02-37120

**MEMORANDUM OPINION ON DEBTOR'S SECOND  
AMENDED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE**

The facts of this case are not in dispute. The IRS timely filed a proof of claim. On August 21, 2003, and on November 3, 2003, after the bar date had passed for the government to file its proofs of claim, the IRS filed proofs of claim that asserted for the first time civil penalties for withholding taxes covering quarters not previously sought in the original proof of claim.

The Debtor objected to the latest proofs of claim on the basis that they were untimely and seeks disallowance of those amounts claimed in the August and November 2003 proofs of claim to the extent that they represent amounts attributable to tax quarters not mentioned in the IRS' original proof of claim. The IRS argued that the August 21, 2003 and November 3, 2003 proofs of claim were simply amendments to its earlier, timely filed proof of claim and, therefore, should be allowed as timely.

The Fifth Circuit has noted that, in ruling on amendments to IRS proofs of claim, bankruptcy courts have considered:

- (1) whether IRS is attempting to stray beyond the perimeters of the original proof of claim and effectively file a "new" claim that could not have been foreseen from the earlier claim or events such as an ongoing or recently commenced audit; and
- (2) the degree and incidence of prejudice, if any, caused by IRS's delay.

*See, In re Kolstad*, 928 F.2d 171, 175 n.7 (5<sup>th</sup> Cir. 1991); *In re Goodman*, 261 B.R. 415 (Bankr.

N. D. Tex. 2001). In addressing the issue, the *Kolstad* court stated, "Amendments do not vitiate

the role of bar dates: indeed, courts that authorize amendments must ensure that corrections or adjustments do not set forth wholly new grounds of liability.” *Kolstad*, 928 F.2d at 175 (citing *Matter of Commonwealth Corp.*, 617 F.2d 415, 420 (5<sup>th</sup> Cir. 1980)).

In the present case, the purported “amendments” by the IRS add to the claims of the IRS tax periods not previously covered by the timely filed claim. The government originally sought a claim based on civil penalties for quarters ending 12/31/00 and 6/30/02. Well after the bar date, the IRS now seeks civil penalties for four additional quarters, one stretching back to 12/31/99.

The claim for tax periods not listed in the original, timely filed claim are new grounds of liability and do not relate back to the filing date of the original claim. *See, In re Waindel*, 65 F.3d 1307 at 1311-12 (5<sup>th</sup> Cir. 1995). To hold otherwise would vitiate the role of bar dates and allow a claimant to improperly circumvent the bar date rules. *See generally, In re Kolstad, supra*.

As to the potential prejudice to the Debtor, there appears to be some, but not much. Debtor’s case has been hampered by the late filing by the IRS. He has been aware of the issues for some time. His bankruptcy case has been delayed by the uncertainty of the priority claims asserted by the IRS, and confirmation, and thus payment to his creditors, hinges on the Court’s determination of the amount of the priority claims. The court finds the prejudice question to be close, but also in favor of the Debtor.

Counsel for the Debtor shall prepare an order allowing the IRS a priority claim in the amount of \$5,386.96.

Signed this 8<sup>th</sup> day of December, 2003



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HONORABLE HARLIN D. HALE  
UNITED STATES BANKRUPTCY JUDGE